

1979 S.C. Op. Atty. Gen. 55 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-41, 1979 WL 29047

Office of the Attorney General

State of South Carolina

Opinion No. 79-41

March 8, 1979

***1 SUBJECT: Correctional Facilities; Jailors; National Guard**

The county, not the Military Department of South Carolina, is financially responsible for the upkeep of prisoners incarcerated to serve a sentence imposed by a court-martial.

TO: COLONEL GEORGE R. WISE

Office of the Adjutant General

QUESTION PRESENTED:

Is the cost of confining a prisoner convicted-by a court-martial the responsibility of the Military Department of South Carolina or the County Jail where the prisoner is kept?

AUTHORITIES:

Sections 25–1–1310; 25–1–2410 to 25–1–2650 inclusive; 25–1–2810; 25–1–2820; and 25–1–3080; Code of Laws of South Carolina (1976);

[McLean v. United States, 73 F.Supp. 775 \(D.S.C. 1947\);](#)

1962 Op.Atty.Gen. 220 (Op.No. 1437).

DISCUSSION:

Maintaining and governing the National Guard of South Carolina is the responsibility of the State. [Section 25–1–1310 of the Code of Laws of South Carolina \(1976\)](#). [Section 25–1–2810 of the Code](#) establishes a military court system for South Carolina. Section 25–1–2820 provides that these courts-martial shall have jurisdiction over all military offenses of members of the National Guard of South Carolina. Upon conviction, § 25–1–3080 provides:

When a sentence of confinement is to be served by an accused convicted and sentenced by a court-martial, the confinement will be served in the county in which the convicted accused was domiciled at the time of the commission of the offense.

The question presented is whether the Military Department or the county in which the convicted person is confined is responsible for the cost of the confinement.

The offenses over which military courts have jurisdiction are set forth in §§ 25–1–2410 to 25–1–2650 in the South Carolina Code. Violations of these statutes, therefore, constitute offenses against the State as opposed, for example, to violations of municipal or county ordinances which constitute offenses only against the particular political subdivisions. [See, McLean v. United States, 73 F.Supp. 775, 777 \(D.S.C. 1947\)](#). In a previous Opinion, this Office took the position that when prisoners are kept in a County Jail for a violation of a—municipal ordinance, the upkeep of the prisoner is the responsibility of the concerned

municipality. However, where a prisoner is confined for the violation of a State statute, the expense of keeping him must be borne by the county. 1962 Op. Atty. Gen. 220 (Op.No. 1437).

[Section 25-1-3080 of the Code](#) clearly requires that a prisoner be sentenced to the custody of the county in which he was domiciled when the offense for which he is convicted was committed. This directive, in conjunction with the fact that offenses are violations of State statutes, require the conclusion that the county is responsible for the upkeep of military prisoners. It is, therefore, the Opinion of this Office that the county, not the Military Department, is financially responsible for prisoners incarcerated pursuant to [§ 25-1-3080](#) to serve a sentence imposed by a court-martial.

*2 Richard B. Kale, Jr.
ASSISTANT ATTORNEY GENERAL

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